

AMENDED IN SENATE MAY 11, 2005

SENATE BILL

No. 1111

Introduced by Committee on Business, Professions and Economic Development (Senators Figueroa (Chair), Aanestad, Campbell, Florez, Morrow, Murray, and Simitian)

March 30, 2005

An act to amend Sections 2053.6, 2230, 2234.1, 2741, ~~2760.1~~, 3735, 3739, 4005, 4038, 4053, 4104, 4114, 4115, 4115.5, 4127.5, 4202, 4205, 4231, 4232, 4315, 4360, 4364, 4365, 4366, 4369, 4371, 4372, 4373, 4400, and 4850 of, to add Sections 3779 and 4023.5 to, to repeal Sections 3735.3, 3736, 3775.2, 3775.3, 4206, 4363, 4367, 4368, and 4370 of, and to repeal and add Sections 4361 and 4362 of, the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1111, as amended, Committee on Business, Professions and Economic Development. Professions and vocations.

Existing law provides for the regulation of various professions, including physicians and surgeons, nurses, respiratory care practitioners, and pharmacists.

This bill would revise and recast certain provisions regulating these professions. The bill would require the Division of Medical Quality to organize itself as 2 panels of 7 members. The bill would require an applicant for a license to practice respiratory care to successfully pass the national respiratory therapist examination. The bill would require a pharmacy to have written policies and procedures for detecting chemical, mental, or physical impairment among licensed individuals employed by or with the pharmacy. The bill would require a pharmacy to report certain information to the California State Board of

Pharmacy for the protection of the public. The bill would require the board to operate a pharmacists recovery program to rehabilitate pharmacists and intern pharmacists whose competence may be impaired due to abuse of alcohol, drug use, or mental illness. The bill would establish requirements for this program and require the board to contract with one or more qualified contractors to administer the program. Because the bill would increase fees under the Pharmacy Law that would be deposited into the Pharmacy Board Contingent Fund which is continuously appropriated, the bill would make an appropriation.

Because a violation of the bill with respect to pharmacists would be a crime, it would impose a state-mandated local program

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2053.6 of the Business and Professions
- 2 Code is amended to read:
- 3 2053.6. (a) A person who provides services pursuant to
- 4 Section 2053.5 that are not unlawful under Section 2051 or 2052
- 5 shall, prior to providing those services, do the following:
- 6 (1) Disclose to the client in a written statement using plain
- 7 language the following information:
- 8 (A) That he or she is not a licensed physician.
- 9 (B) That the treatment is alternative or complementary to
- 10 healing arts services licensed by the state.
- 11 (C) That the services to be provided are not licensed by the
- 12 state.
- 13 (D) The nature of the services to be provided.
- 14 (E) The theory of treatment upon which the services are based.
- 15 (F) His or her educational, training, experience, and other
- 16 qualifications regarding the services to be provided.

1 (2) Obtain a written acknowledgement from the client stating
2 that he or she has been provided with the information described
3 in paragraph (1). The client shall be provided with a copy of the
4 written acknowledgement, which shall be maintained by the
5 person providing the service for three years.

6 (b) The information required by subdivision (a) shall be
7 provided in a language that the client understands.

8 (c) Nothing in this section or in Section 2053.5 shall be
9 construed to do the following:

10 (1) Affect the scope of practice of licensed physicians and
11 surgeons.

12 (2) Limit the right of any person to seek relief for negligence
13 or any other civil remedy against a person providing services
14 subject to the requirements of this section.

15 SEC. 2. Section 2230 of the Business and Professions Code is
16 amended to read:

17 2230. (a) All proceedings against a licensee for
18 unprofessional conduct, or against an applicant for licensure for
19 unprofessional conduct or cause, shall be conducted in
20 accordance with the Administrative Procedure Act (Chapter 5
21 (commencing with Section 11500) of Part 1 of Division 3 of Title
22 2 of the Government Code) except as provided in this chapter,
23 and shall be prosecuted by the Senior Assistant Attorney General
24 of the Health Quality Enforcement Section.

25 (b) For the purpose of exercising its disciplinary authority
26 against a physician and surgeon pursuant to this chapter and the
27 Administrative Procedure Act, the Division of Medical Quality
28 shall organize itself as two panels of seven members. Two
29 members of each panel shall be public members. For purposes of
30 this article, “agency itself,” as used in the Administrative
31 Procedure Act, means a panel of the division as described in this
32 subdivision. The decision or order of a panel imposing any
33 disciplinary action pursuant to this chapter and the
34 Administrative Procedure Act shall be final.

35 SEC. 3. Section 2234.1 of the Business and Professions Code
36 is amended to read:

37 2234.1. (a) A physician and surgeon shall not be subject to
38 discipline pursuant to subdivision (b), (c), or (d) of Section 2234
39 solely on the basis that the treatment or advice he or she rendered

1 to a patient is alternative or complementary medicine if that
2 treatment or advice meets all of the following requirements:

3 (1) It is provided after informed consent and a good-faith prior
4 examination of the patient, and medical indication exists for the
5 treatment or advice, or it is provided for health or well-being.

6 (2) It is provided after the physician and surgeon has given the
7 patient information concerning conventional treatment and
8 describing the education, experience, and credentials of the
9 physician and surgeon related to the alternative or
10 complementary medicine he or she practices.

11 (3) It does not cause a delay in or discourage traditional
12 diagnosis of a condition of the patient.

13 (4) It does not cause death or serious bodily injury to the
14 patient.

15 (b) For purposes of this section, “alternative or complementary
16 medicine” means those health care methods of diagnosis,
17 treatment, or healing that are not generally used but that provide
18 a reasonable potential for therapeutic gain in a patient’s medical
19 condition that is not outweighed by the risk of the health care
20 method.

21 SEC. 4. Section 2741 of the Business and Professions Code is
22 amended to read:

23 2741. An application for reexamination shall be accompanied
24 by the fees prescribed by this chapter.

25 ~~SEC. 5. Section 2760.1 of the Business and Professions Code~~
26 ~~is amended to read:~~

27 ~~2760.1. (a) A registered nurse whose license has been~~
28 ~~revoked, or suspended or who has been placed on probation may~~
29 ~~petition the board for reinstatement or modification of penalty,~~
30 ~~including reduction or termination of probation, after a period not~~
31 ~~less than the following minimum periods has elapsed from the~~
32 ~~effective date of the decision ordering that disciplinary action, or~~
33 ~~if the order of the board or any portion of it is stayed by the board~~
34 ~~itself or by the superior court, from the date the disciplinary~~
35 ~~action is actually implemented in its entirety:~~

36 ~~(1) Except as otherwise provided in this section, at least two~~
37 ~~years for reinstatement of a license that was revoked, except that~~
38 ~~the board may, in its sole discretion, specify in its order a lesser~~
39 ~~period of time provided that the period shall be not less than one~~
40 ~~year.~~

1 ~~(2) At least two years for early termination of a probation~~
2 ~~period of three years or more.~~

3 ~~(3) At least one year for modification of a condition, or~~
4 ~~reinstatement of a license revoked for mental or physical illness,~~
5 ~~or termination of probation of less than three years.~~

6 ~~(b) The board shall give notice to the Attorney General of the~~
7 ~~filing of the petition. The petitioner and the Attorney General~~
8 ~~shall be given timely notice by letter of the time and place of the~~
9 ~~hearing on the petition, and an opportunity to present both oral~~
10 ~~and documentary evidence and argument to the board. The~~
11 ~~petitioner shall at all times have the burden of proof to establish~~
12 ~~by clear and convincing evidence that he or she is entitled to the~~
13 ~~relief sought in the petition.~~

14 ~~(c) The hearing may be continued from time to time as the~~
15 ~~board deems appropriate.~~

16 ~~(d) The board itself shall hear the petition and the~~
17 ~~administrative law judge shall prepare a written decision setting~~
18 ~~forth the reasons supporting the decision.~~

19 ~~(e) The board may grant or deny the petition, or may impose~~
20 ~~any terms and conditions that it reasonably deems appropriate as~~
21 ~~a condition of reinstatement or reduction of penalty.~~

22 ~~(f) The petitioner shall provide a current set of fingerprints~~
23 ~~accompanied by the necessary fingerprinting fee.~~

24 ~~(g) No petition shall be considered while the petitioner is~~
25 ~~under sentence for any criminal offense, including any period~~
26 ~~during which the petitioner is on court-imposed probation or~~
27 ~~parole, or subject to an order of registration pursuant to Section~~
28 ~~290 of the Penal Code. No petition shall be considered while~~
29 ~~there is an accusation or petition to revoke probation pending~~
30 ~~against the petitioner.~~

31 ~~(h) Except in those cases where the petitioner has been~~
32 ~~disciplined for violation of Section 822, the board may in its~~
33 ~~discretion deny without hearing or argument any petition that is~~
34 ~~filed pursuant to this section within a period of two years from~~
35 ~~the effective date of a prior decision following a hearing under~~
36 ~~this section.~~

37 ~~SEC. 6.~~

38 *SEC. 5.* Section 3735 of the Business and Professions Code is
39 amended to read:

1 3735. Except as otherwise provided in this chapter, no
2 applicant shall receive a license under this chapter without first
3 successfully passing the national respiratory therapist
4 examination conducted by those persons, and in the manner and
5 under the rules and regulations, as the board may prescribe.

6 ~~SEC. 7.~~

7 *SEC. 6.* Section 3735.3 of the Business and Professions Code
8 is repealed.

9 ~~SEC. 8.~~

10 *SEC. 7.* Section 3736 of the Business and Professions Code is
11 repealed.

12 ~~SEC. 9.~~

13 *SEC. 8.* Section 3739 of the Business and Professions Code is
14 amended to read:

15 3739. (a) (1) Except as otherwise provided in this section,
16 every person who has filed an application for licensure with the
17 board may, between the dates specified by the board, perform as
18 a respiratory care practitioner applicant under the direct
19 supervision of a respiratory care practitioner licensed in this state
20 provided he or she has met education requirements for licensure
21 as may be certified by his or her respiratory care program, and if
22 ever attempted, has passed the national respiratory therapist
23 examination.

24 (2) During this period the applicant shall identify himself or
25 herself only as a “respiratory care practitioner applicant.”

26 (3) If for any reason the license is not issued, all privileges
27 under this subdivision shall automatically cease on the date
28 specified by the board.

29 (b) If an applicant fails the national respiratory therapist
30 examination, all privileges under this section shall automatically
31 cease on the date specified by the board.

32 (c) No applicant for a respiratory care practitioner license shall
33 be authorized to perform as a respiratory care practitioner
34 applicant if cause exists to deny the license.

35 (d) “Under the direct supervision” means assigned to a
36 respiratory care practitioner who is on duty and immediately
37 available in the assigned patient care area.

38 ~~SEC. 10.~~

39 *SEC. 9.* Section 3775.2 of the Business and Professions Code
40 is repealed.

~~SEC. 11.~~

SEC. 10. Section 3775.3 of the Business and Professions Code is repealed.

~~SEC. 12.~~

SEC. 11. Section 3779 is added to the Business and Professions Code, to read:

3779. For purposes of license verification, a person may rely upon a printout from the board's Internet Web site that includes the issuance and expiration dates of any license issued by the board.

~~SEC. 13.~~

SEC. 12. Section 4005 of the Business and Professions Code is amended to read:

4005. (a) The board may adopt rules and regulations, not inconsistent with the laws of this state, as may be necessary for the protection of the public. Included therein shall be the right to adopt rules and regulations as follows: for the proper and more effective enforcement and administration of this chapter; pertaining to the practice of pharmacy; relating to the sanitation of persons and establishments licensed under this chapter; pertaining to establishments wherein any drug or device is compounded, prepared, furnished, or dispensed; providing for standards of minimum equipment for establishments licensed under this chapter; pertaining to the sale of drugs by or through any mechanical device; and relating to pharmacy practice experience necessary for licensure as a pharmacist.

(b) Notwithstanding any provision of this chapter to the contrary, the board may adopt regulations permitting the dispensing of drugs or devices in emergency situations, and permitting dispensing of drugs or devices pursuant to a prescription of a person licensed to prescribe in a state other than California where the person, if licensed in California in the same licensure classification would, under California law, be permitted to prescribe drugs or devices and where the pharmacist has first interviewed the patient to determine the authenticity of the prescription.

(c) The adoption, amendment, or repeal by the board of these or any other board rules or regulations shall be in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

1 ~~SEC. 14.~~

2 *SEC. 13.* Section 4023.5 is added to the Business and
3 Professions Code, to read:

4 4023.5. For the purposes of this chapter “direct supervision
5 and control” means that a pharmacist is on the premises at all
6 times and is fully aware of all activities performed by either a
7 pharmacy technician or intern pharmacist.

8 ~~SEC. 15.~~

9 *SEC. 14.* Section 4038 of the Business and Professions Code
10 is amended to read:

11 4038. (a) “Pharmacy technician” means an individual who
12 assists a pharmacist in a pharmacy in the performance of his or
13 her pharmacy related duties, as specified in Section 4115.

14 (b) A “pharmacy technician trainee” is a person who is
15 enrolled in a pharmacy technician training program operated by a
16 California public postsecondary education institution or by a
17 private postsecondary vocational institution approved by the
18 Bureau for Private Postsecondary and Vocational Education.

19 ~~SEC. 16.~~

20 *SEC. 15.* Section 4053 of the Business and Professions Code,
21 as added by Section 7 of Chapter 857 of the Statutes of 2004, is
22 amended to read:

23 4053. (a) Notwithstanding Section 4051, the board may issue
24 a license as a designated representative to provide sufficient and
25 qualified supervision in a wholesaler or veterinary food-animal
26 drug retailer. The designated representative shall protect the
27 public health and safety in the handling, storage, and shipment of
28 dangerous drugs and dangerous devices in the wholesaler or
29 veterinary food-animal drug retailer.

30 (b) An individual may apply for a designated representative
31 license. In order to obtain and maintain that license, the
32 individual shall meet all of the following requirements:

33 (1) He or she shall be a high school graduate or possess a
34 general education development equivalent.

35 (2) He or she shall have a minimum of one year of paid work
36 experience, in the past three years, related to the distribution or
37 dispensing of dangerous drugs or dangerous devices or meet all
38 of the prerequisites to take the examination required for licensure
39 as a pharmacist by the board.

(3) He or she shall complete a training program approved by the board that, at a minimum, addresses each of the following subjects:

(A) Knowledge and understanding of California law and federal law relating to the distribution of dangerous drugs and dangerous devices.

(B) Knowledge and understanding of California law and federal law relating to the distribution of controlled substances.

(C) Knowledge and understanding of quality control systems.

(D) Knowledge and understanding of the United States Pharmacopoeia standards relating to the safe storage and handling of drugs.

(E) Knowledge and understanding of prescription terminology, abbreviations, dosages and format.

(4) The board may, by regulation, require training programs to include additional material.

(5) The board may not issue a license as a designated representative until the applicant provides proof of completion of the required training to the board.

(c) The veterinary food-animal drug retailer or wholesaler shall not operate without a pharmacist or a designated representative on its premises.

(d) Only a pharmacist or a designated representative shall prepare and affix the label to veterinary food-animal drugs.

(e) Section 4051 shall not apply to any laboratory licensed under Section 351 of Title III of the Public Health Service Act (Public Law 78-410).

~~SEC. 17.~~

SEC. 16. Section 4104 of the Business and Professions Code is amended to read:

4104. (a) Every pharmacy shall have in place procedures for taking action to protect the public when a licensed individual employed by or with the pharmacy is discovered or known to be chemically, mentally, or physically impaired to the extent it affects his or her ability to practice the profession or occupation authorized by his or her license, or is discovered or known to have engaged in the theft, diversion, or self-use of dangerous drugs.

(b) Every pharmacy shall have written policies and procedures for detecting chemical, mental, or physical impairment, as well

1 as theft, diversion, or self-use of dangerous drugs, among
2 licensed individuals employed by or with the pharmacy.

3 (c) Every pharmacy shall report to the board, within 30 days of
4 the receipt or development of the following information with
5 regard to any licensed individual employed by or with the
6 pharmacy:

7 (1) Any admission by a licensed individual of chemical,
8 mental, or physical impairment affecting his or her ability to
9 practice.

10 (2) Any admission by a licensed individual of theft, diversion,
11 or self-use of dangerous drugs.

12 (3) Any video or documentary evidence demonstrating
13 chemical, mental, or physical impairment of a licensed individual
14 to the extent it affects his or her ability to practice.

15 (4) Any video or documentary evidence demonstrating theft,
16 diversion, or self-use of dangerous drugs by a licensed
17 individual.

18 (5) Any termination based on chemical, mental, or physical
19 impairment of a licensed individual to the extent it affects his or
20 her ability to practice.

21 (6) Any termination of a licensed individual based on theft,
22 diversion, or self-use of dangerous drugs.

23 (7) Any information supporting a reasonable suspicion that a
24 licensed individual is chemically, mentally, or physically
25 impaired to the extent it affects his or her ability to practice.

26 (8) Any information supporting a reasonable suspicion that a
27 licensed individual has engaged in theft, diversion, or self-use of
28 dangerous drugs.

29 (d) Anyone participating in good faith in the making of a
30 report authorized or required by this section shall have immunity
31 from any liability, civil or criminal, that might otherwise arise
32 from the making of the report. Any participant shall have the
33 same immunity with respect to participation in any
34 administrative or judicial proceeding resulting from the report.

35 ~~SEC. 18.~~

36 *SEC. 17.* Section 4114 of the Business and Professions Code
37 is amended to read:

38 4114. (a) An intern pharmacist may perform all functions of
39 a pharmacist at the discretion of and under the direct supervision

1 and control of a pharmacist whose license is in good standing
2 with the board.

3 (b) A pharmacist may not supervise more than two intern
4 pharmacists at any one time.

5 ~~SEC. 19.~~

6 *SEC. 18.* Section 4115 of the Business and Professions Code
7 is amended to read:

8 4115. (a) A pharmacy technician may perform packaging,
9 manipulative, repetitive, or other nondiscretionary tasks, only
10 while assisting, and while under the direct supervision and
11 control of a pharmacist.

12 (b) This section does not authorize the performance of any
13 tasks specified in subdivision (a) by a pharmacy technician
14 without a pharmacist on duty.

15 (c) This section does not authorize a pharmacy technician to
16 perform any act requiring the exercise of professional judgment
17 by a pharmacist.

18 (d) The board shall adopt regulations to specify tasks pursuant
19 to subdivision (a) that a pharmacy technician may perform under
20 the supervision of a pharmacist. Any pharmacy that employs a
21 pharmacy technician shall do so in conformity with the
22 regulations adopted by the board.

23 (e) No person shall act as a pharmacy technician without first
24 being licensed by the board as a pharmacy technician.

25 (f) (1) A pharmacy with only one pharmacist shall have no
26 more than one pharmacy technician performing the tasks
27 specified in subdivision (a). The ratio of pharmacy technicians
28 performing the tasks specified in subdivision (a) to any additional
29 pharmacist shall not exceed 2:1, except that this ratio shall not
30 apply to personnel performing clerical functions pursuant to
31 Section 4116 or 4117. This ratio is applicable to all practice
32 settings, except for an inpatient of a licensed health facility, a
33 patient of a licensed home health agency, as specified in
34 paragraph (2), an inmate of a correctional facility of the
35 Department of the Youth Authority or the Department of
36 Corrections, and for a person receiving treatment in a facility
37 operated by the State Department of Mental Health, the State
38 Department of Developmental Services, or the Department of
39 Veterans Affairs.

1 (2) The board may adopt regulations establishing the ratio of
2 pharmacy technicians performing the tasks specified in
3 subdivision (a) to pharmacists applicable to the filling of
4 prescriptions of an inpatient of a licensed health facility and for a
5 patient of a licensed home health agency. Any ratio established
6 by the board pursuant to this subdivision shall allow, at a
7 minimum, at least one pharmacy technician for a single
8 pharmacist in a pharmacy and two pharmacy technicians for each
9 additional pharmacist, except that this ratio shall not apply to
10 personnel performing clerical functions pursuant to Section 4116
11 or 4117.

12 (3) A pharmacist scheduled to supervise a second pharmacy
13 technician may refuse to supervise a second pharmacy technician
14 if the pharmacist determines, in the exercise of his or her
15 professional judgment, that permitting the second pharmacy
16 technician to be on duty would interfere with the effective
17 performance of the pharmacist's responsibilities under this
18 chapter. A pharmacist assigned to supervise a second pharmacy
19 technician shall notify the pharmacist in charge in writing of his
20 or her determination, specifying the circumstances of concern
21 with respect to the pharmacy or the pharmacy technician that
22 have led to the determination, within a reasonable period, but not
23 to exceed 24 hours, after the posting of the relevant schedule. No
24 entity employing a pharmacist may discharge, discipline, or
25 otherwise discriminate against any pharmacist in the terms and
26 conditions of employment for exercising or attempting to
27 exercise in good faith the right established pursuant to this
28 paragraph.

29 (g) Notwithstanding subdivisions (a) and (b), the board shall
30 by regulation establish conditions to permit the temporary
31 absence of a pharmacist for breaks and lunch periods pursuant to
32 Section 512 of the Labor Code and the orders of the Industrial
33 Welfare Commission without closing the pharmacy. During these
34 temporary absences, a pharmacy technician may, at the discretion
35 of the pharmacist, remain in the pharmacy but may only perform
36 nondiscretionary tasks. The pharmacist shall be responsible for a
37 pharmacy technician and shall review any task performed by a
38 pharmacy technician during the pharmacist's temporary absence.
39 Nothing in this subdivision shall be construed to authorize a

1 pharmacist to supervise pharmacy technicians in greater ratios
2 than those described in subdivision (f).

3 (h) The pharmacist on duty shall be directly responsible for the
4 conduct of a pharmacy technician supervised by that pharmacist.

5 ~~SEC. 20.~~

6 *SEC. 19.* Section 4115.5 of the Business and Professions
7 Code is amended to read:

8 4115.5. (a) Notwithstanding any other provision of law, a
9 pharmacy technician trainee may be placed in a pharmacy to
10 complete an externship for the purpose of obtaining practical
11 training required to become licensed as a pharmacy technician.

12 (b) (1) A pharmacy technician trainee participating in an
13 externship as described in subdivision (a) may perform the duties
14 described in subdivision (a) of Section 4115 only under the direct
15 supervision and control of a pharmacist.

16 (2) A pharmacist supervising a pharmacy technician trainee
17 participating in an externship as described in subdivision (a) shall
18 be directly responsible for the conduct of the trainee.

19 (3) A pharmacist supervising a pharmacy technician trainee
20 participating in an externship as described in subdivision (a) shall
21 verify any prescription prepared by the trainee under supervision
22 of the pharmacist by initialing the prescription label before the
23 medication is disbursed to a patient or by engaging in other
24 verification procedures that are specifically approved by board
25 regulations.

26 (4) A pharmacist may only supervise one pharmacy technician
27 trainee at any given time.

28 (5) A pharmacist supervising a pharmacy technician trainee
29 participating in an externship as described in subdivision (a) shall
30 certify attendance for the pharmacy technician trainee and certify
31 that the pharmacy technician trainee has met the educational
32 objectives established by California public postsecondary
33 education institution or the private postsecondary vocational
34 institution in which the trainee is enrolled, as established by the
35 institution.

36 (c) (1) Except as described in paragraph (2), an externship in
37 which a pharmacy technician trainee is participating as described
38 in subdivision (a) shall be for a period of no more than 120
39 hours.

(2) When an externship in which a pharmacy technician trainee is participating as described in subdivision (a) involves rotation between a community and hospital pharmacy for the purpose of training the student in distinct practice settings, the externship may be for a period of up to 320 hours. No more than 120 of the 320 hours may be completed in a community pharmacy setting or in a single department in a hospital pharmacy.

(d) An externship in which a pharmacy technician trainee may participate as described in subdivision (a) shall be for a period of no more than six consecutive months in a community pharmacy and for a total of no more than 12 months if the externship involves rotation between a community and hospital pharmacy. The externship shall be completed while the trainee is enrolled in a course of instruction at the institution.

(e) A pharmacy technician trainee participating in an externship as described in subdivision (a) shall wear identification that indicates his or her trainee status.

~~SEC. 21.~~

SEC. 20. Section 4127.5 of the Business and Professions Code is amended to read:

4127.5. The fee for the issuance of a nongovernmental license, or renewal of a license, to compound sterile drug products shall be five hundred dollars (\$500) and may be increased to six hundred dollars (\$600).

~~SEC. 22.~~

SEC. 21. Section 4202 of the Business and Professions Code is amended to read:

4202. (a) The board may issue a pharmacy technician license to an individual if he or she is a high school graduate or possesses a General Education Development equivalent, and meets any one of the following requirements:

(1) Has obtained an associate's degree in pharmacy technology.

(2) Has completed a course of training specified by the board.

(3) Has graduated from a school of pharmacy recognized by the board. Once licensed as a pharmacist, the pharmacy technician registration is no longer valid and the pharmacy technician license must be returned to the board within 15 days.

1 (4) Is certified by the Pharmacy Technician Certification
2 Board.

3 (b) The board shall adopt regulations pursuant to this section
4 for the licensure of pharmacy technicians and for the
5 specification of training courses as set out in paragraph (2) of
6 subdivision (a). Proof of the qualifications of any applicant for
7 licensure as a pharmacy technician shall be made to the
8 satisfaction of the board and shall be substantiated by any
9 evidence required by the board.

10 (c) The board shall conduct a criminal background check of
11 the applicant to determine if an applicant has committed acts that
12 would constitute grounds for denial of licensure, pursuant to this
13 chapter or Chapter 2 (commencing with Section 480) of Division
14 1.5.

15 (d) The board may suspend or revoke a license issued pursuant
16 to this section on any ground specified in Section 4301.

17 ~~SEC. 23.~~

18 *SEC. 22.* Section 4205 of the Business and Professions Code
19 is amended to read:

20 4205. (a) A license issued pursuant to Section 4110, 4120,
21 4160, or 4161 shall be considered a license within the meaning of
22 Section 4141.

23 (b) The board may, in its discretion, issue a license to any
24 person authorizing the sale and dispensing of hypodermic
25 syringes and needles for animal use.

26 (c) The application for a license shall be made in writing on a
27 form to be furnished by the board. The board may require any
28 information as the board deems reasonably necessary to carry out
29 the purposes of Article 9 (commencing with Section 4140) of this
30 chapter.

31 (d) A separate license shall be required for each of the
32 premises of any person who sells or dispenses hypodermic
33 syringes or needles at more than one location.

34 (e) A license shall be renewed annually and shall not be
35 transferable.

36 (f) The board may deny, revoke, or suspend any license issued
37 pursuant to this article for any violation of this chapter.

38 ~~SEC. 24.~~

39 *SEC. 23.* Section 4206 of the Business and Professions Code
40 is repealed.

1 ~~SEC. 25.~~

2 *SEC. 24.* Section 4231 of the Business and Professions Code
3 is amended to read:

4 4231. (a) The board shall not renew a pharmacist license
5 unless the applicant submits proof satisfactory to the board that
6 he or she has successfully completed 30 hours of approved
7 courses of continuing pharmacy education during the two years
8 preceding the application for renewal.

9 (b) Notwithstanding subdivision (a), the board shall not
10 require completion of continuing education for the first renewal
11 of a pharmacist license.

12 (c) If an applicant for renewal of a pharmacist license submits
13 the renewal application and payment of the renewal fee but does
14 not submit proof satisfactory to the board that the licensee has
15 completed 30 hours of continuing pharmacy education, the board
16 shall not renew the license and shall issue the applicant an
17 inactive pharmacist license. A licensee with an inactive
18 pharmacist license issued pursuant to this section may obtain an
19 active pharmacist license by complying with Section 704.

20 ~~SEC. 26.~~

21 *SEC. 25.* Section 4232 of the Business and Professions Code
22 is amended to read:

23 4232. (a) The courses shall be in the form of postgraduate
24 studies, institutes, seminars, lectures, conferences, workshops,
25 extension studies, correspondence courses, and other similar
26 methods of conveying continuing professional pharmacy
27 education.

28 (b) The subject matter shall be pertinent to the socioeconomic
29 and legal aspects of health care, the properties and actions of
30 drugs and dosage forms and the etiology, and characteristics and
31 therapeutics of the disease state.

32 (c) The subject matter of the courses may include, but shall not
33 be limited to, the following: pharmacology, biochemistry,
34 physiology, pharmaceutical chemistry, pharmacy administration,
35 pharmacy jurisprudence, public health and communicable
36 diseases, professional practice management, anatomy, histology,
37 and any other subject matter as represented in curricula of
38 accredited colleges of pharmacy.

~~SEC. 27.~~

SEC. 26. Section 4315 of the Business and Professions Code is amended to read:

4315. (a) The executive officer, or his or her designee, may issue a letter of admonishment to a licensee for failure to comply with this chapter or regulations adopted pursuant to this chapter, directing the licensee to come into compliance.

(b) The letter of admonishment shall be in writing and shall describe in detail the nature and facts of the violation, including a reference to the statutes or regulations violated.

(c) The letter of admonishment shall inform the licensee that within 30 days of service of the order of admonishment the licensee may do either of the following:

(1) Submit a written request for an office conference to the executive officer of the board to contest the letter of admonishment.

(A) Upon a timely request, the executive officer, or his or her designee, shall hold an office conference with the licensee or the licensee's legal counsel or authorized representative. Unless so authorized by the executive officer, or his or her designee, no individual other than the legal counsel or authorized representative of the licensee may accompany the licensee to the office conference.

(B) Prior to or at the office conference the licensee may submit to the executive officer declarations and documents pertinent to the subject matter of the letter of admonishment.

(C) The office conference is intended to be an informal proceeding and shall not be subject to the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(D) The executive officer, or his or her designee, may affirm, modify, or withdraw the letter of admonishment. Within 14 calendar days from the date of the office conference, the executive officer, or his or her designee, shall personally serve or send by certified mail to the licensee's address of record with the board a written decision. This decision shall be deemed the final administrative decision concerning the letter of admonishment.

(E) Judicial review of the decision may be had by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure within 30 days of the date the decision was personally served or sent by certified mail. The judicial review shall extend to the question of whether or not there was a prejudicial abuse of discretion in the issuance of the letter of admonishment.

(2) Comply with the letter of admonishment and submit a written corrective action plan to the executive officer documenting compliance. If an office conference is not requested pursuant to this section, compliance with the letter of admonishment shall not constitute an admission of the violation noted in the letter of admonishment.

(d) The letter of admonishment shall be served upon the licensee personally or by certified mail at the licensee's address of record with the board. If the licensee is served by certified mail, service shall be effective upon deposit in the United States mail.

(e) The licensee shall maintain and have readily available a copy of the letter of admonishment and corrective action plan, if any, for at least three years from the date of issuance of the letter of admonishment.

(f) Nothing in this section shall in any way limit the board's authority or ability to do either of the following:

(1) Issue a citation pursuant to Section 125.9, 148, or 4067 or pursuant to Section 1775, 1775.15, 1777, or 1778 of Title 16 of the California Code of Regulations.

(2) Institute disciplinary proceedings pursuant to Article 19 (commencing with Section 4300).

~~SEC. 28.~~

SEC. 27. Section 4360 of the Business and Professions Code is amended to read:

4360. The board shall operate a pharmacists recovery program to rehabilitate pharmacists and intern pharmacists whose competency may be impaired due to abuse of alcohol, drug use, or mental illness. The intent of the pharmacists recovery program is to return these pharmacists and intern pharmacists to the practice of pharmacy in a manner that will not endanger the public health and safety.

~~SEC. 29.~~

SEC. 28. Section 4361 of the Business and Professions Code is repealed.

~~SEC. 30.~~

SEC. 29. Section 4361 is added to the Business and Professions Code, to read:

4361. (a) “Participant” means a pharmacist or intern pharmacist who has entered the pharmacists recovery program.

(b) “Pharmacists recovery program” means the rehabilitation program created by this article for pharmacists and intern pharmacists.

~~SEC. 31.~~

SEC. 30. Section 4362 of the Business and Professions Code is repealed.

~~SEC. 32.~~

SEC. 31. Section 4362 is added to the Business and Professions Code, to read:

4362. (a) A pharmacist or intern pharmacist may enter the pharmacists recovery program if:

(1) The pharmacist or intern pharmacist is referred by the board instead of, or in addition to, other means of disciplinary action.

(2) The pharmacist or intern pharmacist voluntarily elects to enter the pharmacists recovery program.

(b) A pharmacist or intern pharmacist who enters the pharmacists recovery program pursuant to paragraph (2) of subdivision (a) shall not be subject to discipline or other enforcement action by the board solely on the pharmacists or intern pharmacists entry into the pharmacists recovery program or on information obtained from the pharmacist or intern pharmacist while participating in the program unless the pharmacist or intern pharmacist would pose a threat to the health and safety of the public. However, if the board receives information regarding the conduct of the pharmacist or intern pharmacist, that information may serve as a basis for discipline or other enforcement by the board.

~~SEC. 33.~~

SEC. 32. Section 4363 of the Business and Professions Code is repealed.

~~SEC. 34.~~

SEC. 33. Section 4364 of the Business and Professions Code is amended to read:

4364. (a) The board shall establish criteria for the participation of pharmacists and intern pharmacists in the pharmacists recovery program.

(b) The board may deny a pharmacist or intern pharmacist who fails to meet the criteria for participation entry into the pharmacists recovery program.

(c) The establishment of criteria for participation in the pharmacists recovery program shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

~~SEC. 35.~~

SEC. 34. Section 4365 of the Business and Professions Code is amended to read:

4365. The board shall contract with one or more qualified contractors to administer the pharmacists recovery program.

~~SEC. 36.~~

SEC. 35. Section 4366 of the Business and Professions Code is amended to read:

4366. The functions of the contractor administering the pharmacists recovery program shall include, but not be limited to, the following:

(a) To evaluate those pharmacists and intern pharmacists who request participation in the program.

(b) To develop a treatment contract with each participant in the pharmacists recovery program.

(c) To monitor the compliance of each participant with their treatment contract.

(d) To prepare reports as required by the board.

(e) To inform each participant of the procedures followed in the program.

(f) To inform each participant of their rights and responsibilities in the program.

(g) To inform each participant of the possible consequences of noncompliance with the program.

~~SEC. 37.~~

SEC. 36. Section 4367 of the Business and Professions Code is repealed.

~~SEC. 38.~~

SEC. 37. Section 4368 of the Business and Professions Code is repealed.

~~SEC. 39.~~

SEC. 38. Section 4369 of the Business and Professions Code is amended to read:

4369. (a) Any failure to comply with the treatment contract, determination that the participant is failing to derive benefit from the program, or other requirements of the pharmacists recovery program may result in the termination of the pharmacist's or intern pharmacist's participation in the pharmacists recovery program. The name and license number of a pharmacist or intern pharmacist who is terminated from the pharmacists recovery program and the basis for the termination shall be reported to the board.

(b) Participation in the pharmacists recovery program shall not be a defense to any disciplinary action that may be taken by the board.

(c) No provision of this article shall preclude the board from commencing disciplinary action against a licensee who is terminated from the pharmacists recovery program.

~~SEC. 40.~~

SEC. 39. Section 4370 of the Business and Professions Code is repealed.

~~SEC. 41.~~

SEC. 40. Section 4371 of the Business and Professions Code is amended to read:

4371. The board shall review the pharmacists recovery program on a quarterly basis. As part of this evaluation, the board shall review files of all participants in the pharmacists recovery program.

~~SEC. 42.~~

SEC. 41. Section 4372 of the Business and Professions Code is amended to read:

4372. All board records and records of the pharmacists recovery program pertaining to the treatment of a pharmacist or intern pharmacist in the program shall be kept confidential and are not subject to discovery, subpoena, or disclosure pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. However, board records and

1 records of the pharmacists recovery program may be disclosed
2 and testimony provided in connection with participation in the
3 pharmacists recovery program, but only to the extent those
4 records or testimony are relevant to the conduct for which the
5 pharmacist or intern pharmacist was terminated from the
6 pharmacists recovery program.

7 ~~SEC. 43.~~

8 *SEC. 42.* Section 4373 of the Business and Professions Code
9 is amended to read:

10 4373. No member of the board shall be liable for any civil
11 damages because of acts or omissions that may occur while
12 acting in good faith pursuant to this article.

13 ~~SEC. 44.~~

14 *SEC. 43.* Section 4400 of the Business and Professions Code,
15 as added by Section 50 of Chapter 857 of the Statutes of 2004, is
16 amended to read:

17 4400. The amount of fees and penalties prescribed by this
18 chapter, except as otherwise provided is that fixed by the board
19 according to the following schedule:

20 (a) The fee for a nongovernmental pharmacy license shall be
21 three hundred forty dollars (\$340) and may be increased to four
22 hundred dollars (\$400).

23 (b) The fee for a nongovernmental pharmacy annual renewal
24 shall be one hundred seventy-five dollars (\$175) and may be
25 increased to two hundred fifty dollars (\$250).

26 (c) The fee for the pharmacist application and examination
27 shall be one hundred fifty-five dollars (\$155) and may be
28 increased to one hundred eighty-five dollars (\$185).

29 (d) The fee for regrading an examination shall be seventy-five
30 dollars (\$75) and may be increased to eighty-five dollars (\$85). If
31 an error in grading is found and the applicant passes the
32 examination, the regrading fee shall be refunded.

33 (e) The fee for a pharmacist license and biennial renewal shall
34 be one hundred fifteen dollars (\$115) and may be increased to
35 one hundred fifty dollars (\$150).

36 (f) The fee for a nongovernmental wholesaler license and
37 annual renewal shall be five hundred fifty dollars (\$550) and may
38 be increased to six hundred dollars (\$600).

1 (g) The fee for a hypodermic license and renewal shall be
2 ninety dollars (\$90) and may be increased to one hundred
3 twenty-five dollars (\$125).

4 (h) (1) The fee for application, investigation, and issuance of
5 a license as a designated representative pursuant to Section 4053
6 shall be one hundred eighty-five dollars (\$185) and may be
7 increased to two hundred fifty dollars (\$250). If the applicant is
8 not issued a license as a designated representative, the board shall
9 refund seventy-five dollars (\$75) of the fee.

10 (2) The fee for the annual renewal of a license as a designated
11 representative shall be one hundred ten dollars (\$110) and may
12 be increased to one hundred fifty dollars (\$150).

13 (i) (1) The fee for the application, investigation, and issuance
14 of a license as a designated representative for a veterinary
15 food-animal drug retailer pursuant to Section 4053 shall be two
16 hundred fifty dollars (\$250). If the applicant is not issued a
17 license as a designated representative, the board shall refund one
18 hundred dollars (\$100) of the fee.

19 (2) The fee for the annual renewal of a license as a designated
20 representative for a veterinary food-animal drug retailer shall be
21 one hundred fifty dollars (\$150).

22 (j) The fee for a nonresident wholesaler's license and annual
23 renewal issued pursuant to Section 4120 shall be five hundred
24 fifty dollars (\$550) and may be increased to six hundred dollars
25 (\$600).

26 (k) The fee for evaluation of continuing education courses for
27 accreditation shall be set by the board at an amount not to exceed
28 forty dollars (\$40) per course hour.

29 (l) The fee for an intern pharmacist license shall be sixty-five
30 dollars (\$65) and may be increased to seventy-five dollars (\$75).
31 The fee for transfer of intern hours or verification of licensure to
32 another state shall be fixed by the board not to exceed twenty
33 dollars (\$20).

34 (m) The board may waive or refund the additional fee for the
35 issuance of a certificate where the certificate is issued less than
36 45 days before the next regular renewal date.

37 (n) The fee for the reissuance of any license, or renewal
38 thereof, that has been lost or destroyed or reissued due to a name
39 change is thirty dollars (\$30).

(o) The fee for the reissuance of any license, or renewal thereof, that must be reissued because of a change in the information, is sixty dollars (\$60) and may be increased to one hundred dollars (\$100).

(p) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Pharmacy Board Contingent Fund equal to approximately one year's operating expenditures.

(q) The fee for any applicant for a nongovernmental clinic permit is three hundred forty dollars (\$340) and may be increased to four hundred dollars (\$400) for each permit. The annual fee for renewal of the permit is one hundred seventy-five dollars (\$175) and may be increased to two hundred fifty dollars (\$250) for each permit.

(r) The board shall charge a fee for the processing and issuance of a license to a pharmacy technician and a separate fee for the biennial renewal of the license. The license fee shall be twenty-five dollars (\$25) and may be increased to fifty dollars (\$50). The biennial renewal fee shall be twenty-five dollars (\$25) and may be increased to fifty dollars (\$50).

(s) The fee for a veterinary food-animal drug retailer license shall be four hundred dollars (\$400). The annual renewal fee for a veterinary food-animal drug retailer shall be two hundred fifty dollars (\$250).

(t) The fee for issuance of a retired license pursuant to Section 4200.5 shall be thirty dollars (\$30).

~~SEC. 45.~~

SEC. 44. Section 4850 of the Business and Professions Code is amended to read:

4850. Every person holding a license under this chapter shall conspicuously display the license in his or her principal place of business.

~~SEC. 46.~~

SEC. 45. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a

- 1 crime within the meaning of Section 6 of Article XIII B of the
- 2 California Constitution.

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